



United States Senate
WASHINGTON, DC 20510-0504
<http://feinstein.senate.gov>

March 14, 2017

Dear Judge Gorsuch:

With your hearing only six days away, it has come to my attention that your response via the Department of Justice to my letter of February 22 is incomplete and must be supplemented immediately.

In addition to asking about ten specific cases, I asked you to “list all other significant cases in which you participated in making litigation decisions regarding the case; reviewed and edited briefs; or developed case strategy.” This has not yet been done. Documents produced by the Justice Department demonstrate you had a leading role in litigation and strategy over executive power and national security matters that have not yet been identified to the Committee.

For example, in *Ali et al. v Rumsfeld*, which was consolidated with other detainee litigation in the District of Columbia, your name is on the attached motion to dismiss,¹ which was filed in March 2006. This 50-page motion sought to dismiss a case brought by individuals who alleged that they were civilians “who were tortured in U.S. military prisons and detention facilities under the exclusive custody and control of the United States in Iraq and Afghanistan.”² The plaintiffs argued that the view taken by the government’s motion “would leave the Executive with unilateral authority to order or permit the most horrific acts.”

This matter was not disclosed to the Committee despite your own reference to it (or potentially to a related matter) in an appraisal that you drafted about your performance at the Department. In that appraisal, in November 2005, you noted that you “helped draft motion to dismiss the first set of Bivens suits related to the war on terrorism consolidated before Judge Hogan.”³ Your own appraisal also states that you “[h]elped coordinate litigation efforts involving a number of national security matters

¹ Defendant’s and the United States’ Motion to Dismiss, In re Iraq and Afghanistan Detainees Litigation, No. 05-1378 (TFH) (D.D.C. Mar. 6, 2006)

² Plaintiffs’ Consolidated Opposition to Defendants’ Motions to Dismiss, Misc. No. 06-145 (TFH) (D.D.C. May 19, 2006)

³ Document stamped with Bates number DOJ_NMG_0007349. The reference in your appraisal may refer to an earlier draft of the motion in the *Ali* case, or to a motion to dismiss in another case.

-- including the Darby photos litigation and FOIA case seeking a poll of Guantanamo Bay detainees -- with DOD, SDNY, NSC, White House Counsel, among others.”⁴

The Committee simply must have materials fully documenting your role in important litigation about executive power during the administration of President George W. Bush. Accordingly, please do the following:


1. Identify all litigation related to the Bush Administration’s anti-terrorism, intelligence, detention, interrogation, military, or related efforts in which you drafted or reviewed a legal filing.
2. Please provide all such filings to the Committee or identify them in a manner that enables us to obtain them.

In addition, the documents produced by the Department demonstrate you had an extensive role in developing and responding to legislative proposals concerning detention and interrogation policy, both before and after the Supreme Court’s decision in *Hamdan v. Rumsfeld* (2006). Please describe your role in full.

Finally, another document indicates that you made a “proposal for a seminar on torture policy” to the Council on Foreign Relations.⁵ The proposal is not included in the documents submitted. Please provide to the Committee any materials related to any involvement you had in the issue of torture (including so-called ‘enhanced interrogation techniques’), including this proposal.

Because time is of the essence, please respond and provide the requested material not later than March 16, 2017, before 5:00 p.m. eastern time.

Sincerely,



Dianne Feinstein
Ranking Member
Committee on the Judiciary

⁴ “Darby photos litigation” likely refers to litigation over the release of photos from Abu Ghraib prison in Iraq.

⁵ Document stamped with Bates number DOJ_NMG_0149104.